TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1001.

THE UNITED STATES, APPELLANT.

vs.

EDWARD L. JORDAN.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1884.

SUPREME COURT OF THE UNITED STATES.

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vs.

EDWARD L. JORDAN.

APPEAL FROM THE COURT OF CLAIMS.

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1 I.—*Petition.*—*Filed Dec.* 1, 1882.—*J. R.*

In the Court of Claims.

EDWARD L. JORDAN
vs.
THE UNITED STATES. } No. 13377.

To the honorable the justices of the Court of Claims:

The petition of Edward L. Jordan respectfully shows:

That he is a citizen of the United States and a resident of the State of Tennessee, and that he was loyal to the United States throughout the late war.

That he is the identical person so named in the act of Congress, approved July 29, 1882, being chapter 359 of the private acts of the first session Forty-seventh Congress.

That under the provisions of that act he became entitled to receive from the United States, by way of refund of certain internal-revenue taxes paid by petitioner to the United States, the sum of two thousand two hundred and ninety dollars.

That he duly applied to the Secretary of the Treasury for the payment to him of the amount so ordered to be refunded.

That the said Secretary, by letter addressed to the Commissioner of Internal Revenue, under date of September 11, 1882, admitted, allowed, and certified the right and claim of the said petitioner to receive and have the amount stated, and directed that the same be paid to him.

That the said allowance, certificate, and order of the Secretary of the Treasury being presented to the First Comptroller that officer refused to permit a warrant to issue for the payment from the Treasury of
2 the amount named, but directed that a warrant should issue for only the sum of one thousand one hundred and forty-five dollars.

That by reason of the aforesaid action of the said Comptroller the petitioner has not received, nor has been able to obtain, the amount directed to be paid to him by the act of Congress and the Secretary aforesaid, but only the sum aforesaid, which the said Comptroller has permitted to be drawn from the Treasury.

Wherefore the petitioner prays judgment in the sum of one thousand one hundred and forty-five dollars.

CHARLES F. BENJAMIN,
Attorney for Petitioner.

STATE OF TENNESSEE,
County of Rutherford, ss:

Edward L. Jordan, being duly sworn, deposes and says that he is the petitioner aforesaid; that he has read the foregoing petition, and that the same is true to the best of his knowledge and belief.

EDW'D L. JORDAN.

Subscribed and sworn to before me this 25th day of November, A. D. 1882.

Witness my hand and seal of county court of said county, at office at Murfreesboro the day and date above written.

[SEAL.]

W. D. ROBISON,
Clerk Rutherford County Court.

1 I.—*Petition.*—*Filed Dec.* 1, 1882.—*J. R.*

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CHARLES F. BENJAMIN,
Attorney for Petitioner.

STATE OF TENNESSEE,
County of Rutherford, ss:

Edward L. Jordan, being duly sworn, deposes and says that he is the petitioner aforesaid; that he has read the foregoing petition, and that the same is true to the best of his knowledge and belief.

EDW'D L. JORDAN.

Subscribed and sworn to before me this 25th day of November, A. D. 1882.

Witness my hand and seal of county court of said county, at office at Murfreesboro the day and date above written.

[SEAL.] W. D. ROBISON,
Clerk Rutherford County Court.

5261——1

3 II.—*General Traverse.*—*Filed Dec.* 12, 1882.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

4 III.—*Motion to amend petition.*—*Filed and allowed Dec.* 18, 1882.

And now comes the claimant by his counsel, and moves the honorable court for leave to amend the petition in said cause by showing that the petitioner is the sole owner of and person interested in the claim stated in said petition; that no assignment or transfer of said claim, or any part thereof, or interest therein, has ever been made, and that claimant is justly entitled to the amount therein claimed, exclusive of all just credits and offsets.

And claimant further moves, in the event of such amendment being allowed, that he may be excused from reprinting said petition with the amendment, for the reason that the petition, as already framed and printed, substantially though not expressly and formally, embraces the foregoing averments.

CHAS. F. BENJAMIN,
Counsel for Petitioners.

5 STATE OF TENNESSEE,
County of Rutherford, ss:

Edward L. Jordan being duly sworn, deposes and says that he is the claimant above described; that he is the sole owner and beneficiary of said claim; that no assignment or transfer of any part thereof, or interest therein has ever been made, and that the amount claimed therein is exclusive of all just credits or offsets.

EDWARD L. JORDAN.

Sworn to and subscribed before me this 12th day of December, A. D. 1882, as witness my hand and official seal.

[SEAL.]

W. D. ROBISON,
Clerk County Court.

6 IV.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

After the passage of the act of July 29, 1882, chapter 359 (22 Stat. L., 723), the claimant was paid upon a Treasury warrant, dated November 2,

1882, the sum of $1,145 on account of the appropriation made in his favor by said act, and he has been refused any further payment on account thereof.

II.

At the request of the counsel for the defendants the following additional facts are found:

Claimant resided in the second collection district of Tennessee, in Rutherford County. May 5, 1864, an internal-revenue assessor was first appointed for this district.

August 30, 1864, an assessment division of the district, comprising Rutherford County, was first established.

June 6, 1865, the claimant paid the collector of this district $1,145 as annual income tax for the year 1863, under the requirements of the act of July 1, 1862, chapter 119 (12 Stat. L., 473, 474), and $1,145 as the special 5 per cent. war income tax for the year 1863, under the requirements of the joint resolution of July 4, 1864, No. 77 (13 Stat. L., 417).

June 21, 1865, the Secretary of the Treasury issued Special Circular No. 16, containing the following among other regulations:

Section 46 of the internal-revenue act approved June 30, 1864 (13 Stat., 240), provides that whenever the authority of the United States shall have been re-established in any State where the execution of the laws had previously been impossible, the provisions of the act shall be put in force in such State, with such modification of inapplicable regulations in regard to assessment, levy, time, and manner of collection as may be directed by the Department.

Without waiving in any degree the rights of the Government in respect to taxes that have heretofore accrued, or assuming to exonerate the tax-payer from his legal responsibility for such taxes, the Department does not deem it advisable to insist at present upon their payment, so far as they were payable prior to the establishment of a collection district embracing the territory in which the tax-payer resides.

But assessors in the several collection districts recently established in the States lately in insurrection are directed to require returns and to make assessments for the several classes of taxes for the appropriate legal period preceding the first regular day on which a tax becomes due after the establishment of the district. *

In the States of Virginia, Tennessee, and Louisiana collection districts were some time since established, with such boundaries as to include territory in which it has been but recently become possible to enforce the laws of the United States. In those districts the rule laid down above will be so modified as to require the assessment and collection of the first taxes which become due after the establishment of assessment divisions in the particular locality. *

7 June 19, 1873, the Secretary of the Treasury addressed to the Commissioner of Internal Revenue the following letter, which is referred to in the act of Congress mentioned in Finding I:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, June 19, 1873.

SIR: I have considered the claim of William Gosling and others, applicants for refunding taxes alleged to have been illegally collected, included

in schedule No. 243, from your office, and am of opinion that under the existing laws the taxes paid by these parties were legally paid and should not be refunded. But I fully recognize the hardship of the case, and desire that such claimants may receive relief from Congress.

I have therefore to suggest that you will in your next annual report, or on any other occasion which you may deem more fitting, recommend the passage of a special act authorizing the refunding of all taxes paid by residents of the insurrectionary States which under Department circular of June 21st, 1865, should not have been collected, such refunding to be made whether the tax in question was collected before or after the issue of the circular.

I am, very respectfully,

WILLIAM A. RICHARDSON,
Secretary of the Treasury.

After the passage of said act the Commissioner of Internal Revenue addressed the following letter to the Secretary of the Treasury:

TREASURY DEPARTMENT,
OFFICE OF INTENAL REVENUE,
Washington, Sept. 6, 1882.

Hon. CHARLES J. FOLGER,
Secretary of the Treasury:

SIR: I have the honor to transmit herewith for your action the following claims for the refunding of taxes assessed and collected contrary to the provisions of regulations, special No. 16, issued June 21, 1865, viz:

* * * * * * *

Edward L. Jordan..... $2, 290 00

[with other names mentioned in said act, and the amount therein specified set against each name.]

Under an act, Private No. 176, approved July 29, 1882, you are authorized and directed to remit, refund, and pay back the taxes so assessed upon and collected from these and certain other claimants.

The remainder of the claims will be forwarded as soon as they are in proper form.

Very respectfully,

H. C. ROGERS,
Acting Commissioner.

Upon which was indorsed the following order:

TREASURY DEPARTMENT,
September 11, 1882.

By virtue of the authority conferred upon the Secretary of the Treasury by "An act for the relief of citizens of Tennessee" (Private, No. 176), approved July 29, 1882, I hereby direct the payment of the several sums specified in the within letter to the persons or their legal representatives therein named, in accordance with said act.

H. F. FRENCH,
Acting Secretary.

Subsequently, after this action had been commenced, the following indorsement was made thereon:

TREASURY DEPARTMENT,
December 7, 1882.

The foregoing order of September 11, 1882, is construed to mean only that such sums shall be refunded or paid as were collected from the persons within named contrary to the provisions of the regulations issued by the Secretary of the Treasury under date of June 21, 1865, mentioned in said act, and effect is to be given to said order accordingly.

CHAS. J. FOLGER,
Sec'y, &c.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover the sum of $1,145, being the unpaid balance of the appropriation made in his favor by the said act of July 29, 1882.

8 V.—*Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court.

On the 29th of July, 1882, Congress passed the following act (22 Stat. L., 723):

1882. CHAP. 359.—An act for the relief of citizens of Tennessee.

Be it enacted, &c., That the Secretary of the Treasury be, and he is hereby, authorized and directed to remit, refund, and pay back, out of any moneys in the Treasury not otherwise appropriated, to the following-named citizens of Tennessee, or the legal representatives of such as are deceased, the amount of taxes assessed upon and collected from the said named persons contrary to the provisions of the regulations issued by the Secretary of the Treasury under date of June twenty-first, eighteen hundred and sixty-five, and published in special circular numbered sixteen from the Internal Revenue Office of that date, said refunding having been recommended by the Secretary of the Treasury, under date of June nineteenth, eighteen hundred and seventy-three—

That is to say:

To William Campbell	$8 96
Thomas Dean	47 60
J. B. Dixon	13 36
Jesse Evans	48 80
A. H. Evans	84 20
Martin Euless	9 20
The estate of Preston Frazier, deceased.	168 00
All of Bedford County, Tennessee.	
To J. B. Jeffries	16 64
Winston W. Gill	169 60
Joshua M. Hix	14 80
Thomas Lipscomb	99 92
Bryant Landis	33 20

William Little	209 04
Thomas B. Marks	28 15
James S. Newton	119 60
Ambrose L. Parks	43 76
Absalom Reeves	37 60
The estate of Alfred Ransom, deceased	26 40
G. D. Stephenson	14 00
Mike Shoffner	40 00
Price C. Steele	112 00
Matthew Shearon	38 00
Richard H. Sims	36 80
William J. Shoffner	56 80
Newton Thompson, second	17 60
J. F. Thompson	11 20
Lewis Tillman	40 00
Thomas C. Whiteside	80 00
The estate of E. D. Winsett, deceased	35 60
Jackson Wallace	17 60
Harbert Wiggins	42 00
A. L. Adams	56 00
Joseph Anderson	15 20
William A. Allen	77 60
Thomas W. Buchanan	192 00
John A. Blakemore	48 00
Charles L. Cannon	26 00
John L. Cooper	118 80
J. H. Cunningham	19 20
John Cortner	26 00
Lewis Markel	868 50
William Gosling	794 00
John J. Jarrett	36 40
Wilson Tarrentine	32 00
All of the county of Bedford, Tennessee.	
To George W. Smith	122 00
To the estate of Samuel Winston, deceased	356 00
Ellis Suttle	104 75
All of Rutherford County, Tennessee.	
To George W. House	62 04
Thomas A. Elliott	232 00
Stephen H. Singleton	273 00
William H. Wallace	90 40
Susan Rucker	88 00
Thomas B. Miles	164 00
The estate of James G. De Jarnette, deceased	283 20
Morris Cross	32 00
Isham R. Peebles	202 67
William Bosson	232 00
M. H. Alexander	267 68
Emanuel Rosenfield	42 24
The estate of Thomas Hord, deceased	113 12
Edwin H. Ewing	68 24

Benjamin Beaty	600 16
James M. Haynes	352 00
The estate of Luckett Davis, deceased	399 12
Alfred Ross	259 12
Samuel B. Watkins	128 24
John W. Richardson	500 08
The estate of M. Burgess Wade, deceased	528 00
Willie Brown	324 80
Robert D. Reed	152 00
The estate of John B. Kimbro, deceased	48 00
The estate of James Bass, deceased	55 20
Peyton Randolph	44 00
Edward L. Jordan	2,290 00
M. F. Jordan	272 00
Felix G. Miller	197 92
S. E. Parrish	83 20
Elizabeth M. Smith	274 56
Joseph Watkins	384 00

All of Rutherford County, Tennessee

To Asa Faulkner, of Warren County, Tennessee	2,700 00
And to William H. Ladd, of Williamson County, Tennessee	866 36

Said persons and each of them having filed their claims in the office of the Commissioner of Internal Revenue prior to the sixth of June, eighteen hundred and seventy-three.

July 29, 1882.

9 On the part of the defendants it is contended that this act does not appropriate to the parties named the specific sums mentioned therein, but only so much thereof in each case as is shown to have been assessed and collected contrary to the provisions of the circular issued by the Secretary of the Treasury under date of June 21, 1865.

In our opinion the act does not admit of that interpretation, nor leave open any question for this court or the accounting officers of the Treasury except the identity of the claimants with the persons therein named. The language of the act taken together is too clear to admit of doubt that Congress undertook, as it had a right to do, to determine not only what particular citizens of Tennessee by name should have relief, but also the exact amount which should be paid to each one of them.

The act begins by authorizing and directing the Secretary of the Treasury to remit, refund, and pay back "to the following-named citizens of Tennessee, or the legal representatives of such as are deceased, the amount of taxes assessed upon and collected from the said named persons contrary to the provisions of the regulations issued by the Secretary of the Treasury under date of June 21, 1865, that is to say;" and then follow the names of eighty-one persons, with the specific amount to be paid to each, carried out in dollars and cents with great minuteness, varying from $8.96 to $2,700.

Had the enactment ended with the general language immediately preceding the words "that is to say," the position taken on the part of the defendants would be correct, because there would have been no method of determining who were the persons intended, or the amount to be paid to

each, except through investigation and proof of the facts referred to. Congress did not see fit thus to leave the matter, but immediately thereafter proceeded to specify exactly what particular cases they intended to reach, and exactly to what extent they granted relief in each. They preceded this explicit specification by the important and significant words, "that is to say." This phrase is synoymous with "in other words," "namely," "to particularize," "to be more explicit," and is employed to convey in a more specific form the meaning and intent of the preceding words. What follows such a phrase must govern what precedes it, so far as there is any difference, because it is the more carefully chosen language of the author to explain his meaning.

Congress, through its committees, when the bill was drafted or at other stages of its progress, starting with the idea of refunding the taxes of those from whom collections had been made contrary to the provisions of the Treasury circular, seem to have considered in some form, and to have passed upon the separate case of each claimant to the large number of eighty-one, extending the act to great length as compared with what it would have been had the particular names and amounts been omitted. In doing so they were not bound by the general principle of relief first enunciated, and it is easy to see how, finding some claims in which, though the taxes had not been paid strictly contrary to the Treasury circular referred to, yet they had been assessed and paid under similar circumstances of hardship, and ought in justice to be refunded as much in that case as in the other, they determined to class them together and to grant relief to all alike.

The facts put into the findings at the request of the defendants, even if competent to control the construction of the enactment in any particular, show how Congress might very naturally and with great propriety have proceeded in precisely that manner in framing this act.

The facts are these: The claimant was a citizen of Rutherford County, Tennessee, in the years 1863 and 1864. As such he became liable for two income taxes of equal amount, for the year 1863, one the general income tax under the act of July 1, 1862, ch. 119, (12 Stat. L., 373, 374), and the other the special war income tax under the joint resolution of July 4, 1864, No. 77 (13 Stat. L., 417). The first was made payable June 30, 1864, and the second October 1, 1864

Rutherford County, as well as the other counties named in the act, had been in a disturbed condition by the war during the whole year 1863, at times overrun in part by the military forces of the one side and of the other, and the United States had not been able to protect its citizens from burdens imposed by the public enemy nor to secure them in the peaceful pursuit of their occupations. It was not until August 30, 1864, eight months after the expiration of the year for which these taxes were assessed had expired, that an internal-revenue assessment division was established in the county. When so established the assessor proceeded to assess upon the claimant and other citizens the income taxes of both classes for the year 1863, and the claimant paid his assessments so made June 6, 1865. Fifteen days after such payment, on the 21st of June, 1865, the Secretary of the Treasury issued a circular in which he stated that he did not deem it advisable to insist, for the present, upon the payment of taxes by citizens in districts where the execution of the laws had been impossible, "so

far as they were payable prior to the establishment of a collection district embraced in the territory in which the tax-payer resides."

On examining the reason given therein by the Secretary for his action in issuing the circular of June 21, 1865, we find it to apply with equal force to the refund of the special war income tax as to that of the annual income tax for the same year, without reference to technicalities. The only difference between the two classes of taxes is that one became payable two months before and the other two months after the establishment of the collection district in the county. But the exact date which the laws had fixed for the payment of the taxes was not the material point on which the circular was founded.

The substantial reason why the citizens of Rutherford County and any other counties in Tennessee should be relieved from the burdens of the harsh laws of taxation imposed upon them, was that during the whole year 1863, for which they had been assessed, they were outside of the protection of the United States Government. The accidental circumstance that in the course of the succeeding year a collection district was established there in the interval of the three months between the periods fixed by law for the payment of the different taxes did not affect the merits of the case, nor is it probable that it influenced the action of the Secretary of the Treasury. The hardship of subjecting people thus situated to taxation was precisely the same in both cases.

Congress might well have taken that just and liberal view of the matter, considering that taxes assessed under such circumstances, whether collected before or after the issuing of the Treasury circular, or whether they were general income taxes, or special war income taxes, payable the one before and the other after the collection district was established,
11 they might have held that all came within the spirit if not the exact terms of the Secretary's circular, and were equally entitled to relief. To give effect to such conclusion it was not necessary to set out in the act their interpretation of the circular to which reference was made, nor the reasons why they departed from its strict application in every case in passing upon the separate claims before them. It must not be overlooked that Congress was not dealing with legal rights under the circular, for the claimants had acquired no such rights, and therefore mere technicalities would not be much considered in granting relief.

But whatever induced Congress to take up the several cases of the numerous persons named in the act, and to grant to them from the public Treasury the specific sums of money therein mentioned, whether it was for reasons set out in the act itself, or for other and different reasons, their action is final and conclusive, and cannot be reviewed by this court nor by any executive officers. It would be an unwarranted assumption of power to review elsewhere the facts and reasons which Congress states for granting money in any of the numerous special acts passed for the relief of individual persons, and to deprive such persons of the money appropriated for them, merely because it is held here or in the Treasury Department that the conclusions of the act are not warranted by the facts and reasons upon which they purport to be founded.

The act now under consideration makes reference to other facts besides that of the Treasury circular, and if one is to be inquired into all may be.

The act recites that the Secretary of the Treasury, under a given date,

recommended the action taken by Congress, and also that the persons named, and each of them, had "filed their claims in the office of the Commissioner of Internal Revenue prior to the 6th of June, 1873." There is no more reason why it should be made to appear that Congress was right in assuming that the claims allowed came within the terms of the Treasury circular than in assuming that the Secretary had recommended each and every one of them, and that they had all been filed with the Commissioner prior to June 6, 1873. Congress might have been mistaken in one or all these particulars, but they so enacted, and whatever is enacted, right or wrong, constitutes the law and the facts of the case.

A mistake of facts upon which the action of Congress is predicated does not control the positive enactment founded upon it. Such a mistake might be a good cause for the repeal of an act by the power which passed it, but would be no justification for a court or the executive officers to set it aside or to restrict its effect.

This act is not peculiar on account of its recital of facts. Such recitals abound in the multitude of special acts passed for the relief of individual persons, and to require all the facts recited to be proved in court or elsewhere before the parties can obtain the money granted to them would be an unjustifiable hardship. Take, for example, the act of August 7, 1882, chapter 482 (22 Stat. L., 737): It authorizes and directs the Secretary of the Treasury to pay to the executors of F. the sum of $7,684.70, "to reimburse the estate of the said F. for losses sustained by him while Secretary of the Senate in making good the deficit in the accounts of the financial clerk." No one would seriously urge, we think, that Congress had not fixed the amount to be paid, but had left it to be determined by proof before the accounting officers, or before this court, if suit should be brought, of the exact amount of losses incurred.

12 In that act, as well as in the one involved in the present suit, we find an entire absence of words implying the vesting of discretionary power over the matter in any public officer or court, such as are found in another class of acts where it is clearly intended to leave the payment of money, in whole or in part, to the judgment of others upon further investigation. Instead of merely authorizing the Secretary to pay, as is frequently the case, it authorizes and directs him to do so. The words "or so much thereof as may be necessary," common in appropriation acts, following and qualifying amounts appropriated, are omitted. In this act, at the beginning of the list, are inserted the words already commented upon, "that is to say," which particularize and make definite and explicit the amount to be paid. Sometimes express instructions are inserted directing a re-examination and settlement by the accounting officers or others, but no such directions are to be found in this act.

The mere fact that it is the Secretary of the Treasury who is authorized and directed to pay the money does not clothe him with discretionary power in the matter. That direction is a common formula in special or private acts, and does not take the case out of the ordinary rules and practices for the settlement of accounts in the Treasury Department.

The claimant's right to the money rests upon the act of Congress, and does not depend upon any order of the Secretary. The refusal of that officer or of the accounting officers to pay it or to order it to be paid can-

not defeat the right which the claimant derives from higher authority, the law-making power.

Having been refused payment at the Treasury, the claimant has a remedy in this court, because his claim is founded upon a law of Congress, and so is within the express terms of Revised Statutes, section 1059, conferring jurisdiction on the Court of Claims.

Judgment will be entered for the claimant for the sum of $1,145.

13 VI.—*Final judgment.*

At a Court of Claims held in the city of Washington, on the 21st day of January, A. D. 1884, judgment was ordered to be entered up as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Edward L. Jordan do have and recover of and from the United States the sum of eleven hundred and forty-five dollars ($1,145.00).

14 VII.—*Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 21st day of January, A. D. 1884, in favor of claimant, the defendants, by their Attorney-General, on the 6th day of March, 1884, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed March 6th, 1884.

Allowed.

C. D. DRAKE, *C. J.*

15 VIII.—In the Court of Claims.

EDWARD L. JORDAN }
vs. } No. 13377.
THE UNITED STATES. }

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the defendants for the allowance of appeal to the Supreme Court of the United States, and the order allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this fifteenth day of July, A. D. 1884.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 1001. Court of Claims. The United States, appellant vs. Edward L. Jordan. Filed 4th October, 1884.

13416

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE UNITED STATES, APPELLANT,
vs.
EDWARD L. JORDAN. } No. 1001.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE UNITED STATES, APPELLANT, *vs.* EDWARD L. JORDAN. } No. 1001.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The whole question involved in this appeal is upon the construction of the act of Congress of July 29, 1882, entitled "An act for the relief of citizens of Tennessee" (22 Stat., 723), which is as follows:

> *Be it enacted, &c.*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to remit, refund, and pay back, out of any moneys in the Treasury not otherwise appropriated, to the following-named citizens of Tennessee, or the legal representatives of such as are deceased, the amount of taxes assessed upon and collected from the said named persons contrary to the provisions of the regulations issued by the Secretary of the Treasury under date of June twenty-first, eighteen hundred and sixty-five, and published in special circular numbered sixteen from the Internal Revenue Office of that date, said

refunding having been recommended by the Secretary of the Treasury, under date of June nineteenth, eighteen hundred and seventy-three—

That is to say: here follows a list of the "citizens of Tennessee," with a sum of money set opposite each name. The amount set against the name of the appellee is $2,290. But the accounting officers of the Treasury would only pay appellee $1,145, part of the said sum, and refused to pay him any more, upon the ground that the law only authorized payment of so much of the sum named as might be determined at the Treasury to represent the amount of taxes assessed and collected contrary to the regulations of the Secretary of the Treasury named in the act, and that the sum paid appellee was the sum total of the taxes that had been improperly collected from him.

It is to recover the residue of the sum named in the act, that is to say, $1,145, that this suit is brought.

The Court of Claims held that the claimant was entitled to the whole amount named in the law.

In this conflict of view between the Court of Claims and the Treasury as to the meaning of the act it was deemed advisable to bring the question here, and the matter being a very simple one, and more likely to be clouded than otherwise by argument, it is hereby submitted on the findings and opinion of the learned Court of Claims, the appellant assigning for error that the judgment of the learned court should have been for the defendant instead of the plaintiff.

WM. A. MAURY,
Assistant Attorney General.

113-48

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1001.

THE UNITED STATES,

APPELLANTS,

vs.

EDWARD L. JORDAN.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF AND ARGUMENT FOR THE APPELLEE.

CHARLES F. BENJAMIN,
Counsel for Appellee.

WASHINGTON, D. C.
C. W. BROWN, PRINTER, 923 F STREET, N. W.
1884.

Supreme Court of the United States.

OCTOBER TERM, 1884—No. 1001.

THE UNITED STATES } Appeal from the
vs. } Court of Claims.
EDWARD L. JORDAN. }

BRIEF AND ARGUMENT FOR THE APPELLEE.

STATEMENT OF THE CASE.

May 5, 1864, an assessor of internal revenue was first appointed for the second district of Tennessee, wherein the appellee resided.

The internal revenue act of June 30, 1864, (13 Stat., 240,) authorized, in respect of the insurgent States, "such modification of inapplicable regulations in regard to assessment, levy, time and manner of collection as may be directed by the Department.

August 30, 1864, an assessment division was first established in appellee's county of Rutherford.

June 6, 1865, the appellee paid $1,145, as annual income tax for the year 1863, (see act of July 1, 1862, 12 Stat., 473, 474,) and $1,145 as the special war tax on income for 1863 (see joint resolution of July 4, 1864, 13 Stat., 417).

June 21, 1865, the Department (p. 3 of record) directed a modification of the regulations so as to require, in the State of Tennessee, only "the assessment and collection of the first taxes which become due after the establishment of assessment divisions in the particular locality."

In consequence of such direction, appellee and others applied for refund of the internal taxes already collected for 1863, but the Secretary of the Treasury (p. 4) held that they could not be legally refunded; adding: "I fully recognize the hardship of the case and desire that such claimants may receive relief from Congress."

After the passage of the act of July 29, 1882, (22 Stat., 723,) the Secretary of the Treasury (p. 4) directed the payment to appellee of the amount of $2,290.

Under this order only the amount of $1,145 was paid (p. 3).

After suit had begun by appellee in the Court of Claims, the Secretary (p. 5) construed his order of payment to mean that only such sums should be paid back as were collected contrary to the regulations of June 21, 1865, (p. 5).

Summary of the Argument.

1. The apparent object of the regulations published in the Treasury circular of June 21, 1865, was to relieve the people of the insurrectionary States from the payment of internal revenue taxes for the period during which they had been subjected to the taxation of the Confederate government.

2. In this view, it could not have been the purpose of said regulations to discriminate amongst different kinds or classes of such taxes, as the claims of all to remission were equally meritorious.

3. The greater number and amount of such taxes were assessable and payable either monthly, or upon the production or removal of the excisable article, and hence a probability that the language of the regulations referred to would adapt itself more closely to such taxes than to an income tax, assessed and paid yearly.

4. The sentence, "the first taxes which *become* due," found in the last paragraph of the regulations mentioned, indicates an intention to remit all taxes accruing prior to the date of the regulations.

5. The interpretation placed upon the regulations by the

Treasury Department, in 1873, appears to comport with the views taken in the first and second paragraphs of this summary.

6. The specified amounts which the act of July 29, 1882, chap. 359, directs to be refunded to the persons named therein are the precise amounts which the reason and justice of the case would require to be refunded, and hence a presumption that the statute conforms to the intent and meaning of the regulations cited therein.

7. The claim or right to a refund depending wholly upon equitable principles, it is impossible to suppose that a refunding act means to prefer one tax accruing during the Confederate regime to any other tax accruing during the same period.

8. The phrase, "that is to say," is so used and placed in the statute as to connect and harmonize the various provisions thereof, and to render their terms convertible.

9. The phrase "contrary to the *provisions* of the regulations," as found in the statute, implies a broader construction of the regulations than might be derivable from the mere language thereof.

10. The language beginning with the phrase, "that is to say," is manifestly intended as a construction of what precedes it, and it is obviously competent for the legislature to supply a contemporaneous explanation of its enactment.

11. Congress having undoubted discretionary power to refund the taxes described in the statute, the latter is not bound to conform itself to the regulations cited therein, nor to disclose all the motives to its enactment; and the relief granted being purely equitable, it is not necessary to inquire into the purely legal aspects of the subject-matter of the statute.

12. If there be ambiguity or inconsistency in the statute, that part directing payment of specific amounts to specific parties must prevail, as being the latest and clearest intention, and this view is aided by the internal proof which the

statute affords that each case relieved was separately considered by the legislature.

I.

The act of July 29, 1882, directs the Secretary of the Treasury, firstly, to refund to Edward L. Jordan the taxes collected from him "contrary to the provisions of the regulations" issued by the Secretary in 1865, and, secondly, to refund "to Edward L. Jordan, $2,290." Is there any conflict between these several expressions of the legislative will? That the legislature did not intend or foresee any conflict is evidenced by the phrase "that is to say," which is obviously used for the purpose of declaring that the amount collected "contrary to the provisions of the regulations" was "$2,290." The lawmakers plainly meant their work to be harmonious; hence a duty here to seek for accord, if accord can possibly be found. (Beals *v.* Hale, 4 How., 37.)

II.

The $2,290 collected from the appellee was made up of two elements; one, the regular income-tax for the year 1863, and the other, the special war-income tax for the same period. Both were legally due, and collection and payment were as obligatory upon collector and payee in the case of one tax as in that of the other tax. Neither was entitled to be refunded except upon grounds of equity; but the equity was as strong in the one case as in the other. It is impossible to conceive of the Secretary as intentionally waiving one tax and intentionally requiring the other. He must have meant to waive both or none. Possibly, the language of the circular of 1865 was so inapt as to defeat the intention of the circular; but when sure of the intention, the court will not permit the words to defeat it, if such a mishap can reasonably be avoided.

The language of the circular is as follows:

Section 46 of the internal revenue act approved June 30,

1864, (13 Stat., 240,) provides that whenever the authority of the United States shall have been re-established in any State where the execution of the laws had previously been impossible, the provisions of the act shall be put in force in such State, with such modification of inapplicable regulations in regard to assessment, levy, time, and manner of collection as may be directed by the Department.

Without waiving in any degree the rights of the Government in respect to taxes that have heretofore accrued, or assuming to exonerate the tax-payer from his legal responsibility for such taxes, the Department does not deem it advisable to insist at present upon their payment, so far as they were payable prior to the establishment of a collection district embracing the territory in which the tax-payer resides.

But assessors in the several collection districts recently established in the States lately in insurrection are directed to require returns and to make assessments for the several classes of taxes for the appropriate legal period preceding the first regular day on which a tax becomes due after the establishment of the district. *

In the States of Virginia, Tennessee, and Louisiana, collection districts were some time since established, with such boundaries as to include territory in which it has but recently become possible to enforce the laws of the United States. In those districts the rule laid down above will be so modified as to require the assessment and collection of the first taxes which become due after the establishment of assessment divisions in the particular locality. *

It is important to remember that the words "taxes that have heretofore accrued" do not refer solely to taxes upon incomes, but as the circular itself says, to "several classes of taxes." If we turn to the statute under which the circular was issued (13 Stat., 223,) we shall find that, apart from such annual taxes as those upon incomes and for licenses to carry on certain trades and professions, there were monthly taxes upon a great variety of products and manufactures, sales, and traffic and other receipts, besides other taxes that accrued when the article taxed should be produced. These non-annual taxes were vastly more important in amount than the income taxes, and it is only reasonable

to suppose that it was these excise, and other monthly and occasional taxes which were chiefly in mind when the circular was drafted. If this be so, much less would the Secretary be likely to have in mind the fact that, in respect of 1863, the regular income tax fell due upon one date in 1864 and the special income tax at another date in the same year; and not having the fact in mind, he would hardly remember that he must use language especially adapted to the case of this exceptional tax in that particular year.

What the Secretary evidently had in mind was the great number of taxes accruing either monthly, or at the moment of production or removal from factory, and his object undoubtedly was to exempt the people in the territory then lately wrested from the insurgents from paying tax for any period anterior to the time when the Federal Government found itself in a position to protect them in the lawful and peaceable pursuit of their avocations. Had it not been for this circular of 1865, many persons who for three years or more had been subject to the exhaustive and rigid taxation of the Confederate government would have been compelled to pay an enormous amount of accumulated taxes to the United States, in addition to what had been currently taken from them by the hostile government. If the circular was lawful and meritorious in respect of any tax in the whole list of taxes, it was equally so in respect of every tax in the list.

Although an assessment division was established in Rutherford County as early as August 30, 1864, it does not follow that the authority of the government had been permanently restored there; for as late as the latter half of *December* of that year, the Federal forces throughout Middle Tennessee were all drawn in and concentrated at Nashville, a considerable distance from Rutherford County.

How the Secretary construed the circular of 1865 is shown by his letter of 1873 (p. 3, bottom) where he plainly refers to the taxes subsequently dealt with in the act of 1882 (the appellee's war-tax of 1863 being one of them) as taxes

"which, under Department circular of June 21, 1865, should not have been collected."

Against the equity and reason of the circular, against its plain object and intent, and against the construction placed upon it by the Department which issued it, nothing can be opposed but the detached and naked language of its closing paragraph—"require the assessment and collection of the first taxes which become due after the establishment of assessment divisions in the particular locality." And even this language helps the position of the appellee in some degree, for the word "become" indicates that the draftsman of the circular had future taxation in his mind all the time.

The legislature manifestly took the same view of the language of the circular in 1882 as did the Secretary in 1873, for there can be no doubt that the act of 1882 undertakes to declare that $2,290 were collected from the appellee "contrary to the provisions" of the circular of 1865. Perhaps the term "provisions" was used advisedly, as indicating the legislative purpose not to be bound down to the bare words of the circular.

III.

But whatever the circular of 1865 said, or was meant to say, it cannot be successfully asserted that Congress was bound to conform its action to the strict language, or a strict operation thereof. It is too late, now, to deny to Congress the power to refund a tax if, upon any ground, Congress thinks it ought to be refunded. If Congress meant to refund the war-income tax paid by appellee, and used effective words to that end, no legal obstacle prevents the operation of that intention.

The act of 1882 says: "The Secretary of the Treasury * * is hereby * * directed to remit, refund and pay back * * to Edward L. Jordan $2,290." This is the precise amount that ought, in reason and justice, to be paid back, if anything is to be refunded. No part of the sum total of $2,290 paid by the appellee to the revenue collector

has any greater or other claim to be refunded than has every other part. Are we to withhold from this act of 1882 the presumption that it was meant to be just and reasonable? If not, we must concede that its intent is to refund the whole of the amount paid; and in thus conceding that the statute goes upon grounds of reason and justice we are relieved from any necessity of supposing that Congress made a mistake as to the kinds of tax which appellee paid, or as to the date when the several kinds of tax fell due, or as to the date when an assessment division was established in Rutherford County.

The act of 1882 deals exclusively with equitable, and not with legal rights or claims; and hence there is not the same necessity or justification for looking behind the statute to see what the precise state of facts was which gave occasion to the enactment.

The facts, that each beneficiary is particularly named in the statute; that the amount to be refunded to each nominee is exactly specified, and that the statute recites that each person had filed his claim in a certain place by a certain day, proves that there had been a separate consideration of each case before the statute was framed. If so, Congress must have meant to pay back to each beneficiary the precise amount named, and such intent being within its constitutional powers, no right of revision exists elsewhere.

The statute says that the Secretary's letter of 1873 recommended the refunding prescribed by the act. The letter described is in the record (p. 3, bottom), and appears to contain nothing inconsistent with the recital of the statute; but if otherwise, there might be other grounds, not recited, for refunding the specified amounts.

Considering the fact that this appellee was a resident of a State in rebellion and, therefore, beyond the sure protection of the power of the Government till 1865; considering the obvious spirit, reason and object of the circular of 1865; considering the apparent construction placed upon that circular by the Secretary's letter of 1873; considering the ab-

solute equality in point of merit, and from the standpoint of a refund, of the two income taxes which make up the $2,290 paid by the appellee; considering the unusual caution displayed in the statute, by reciting in full the names of the several beneficiaries, and the amount to be repaid to each; considering the careful manner in which the only parts of the statute likely to occasion doubt are connected and made convertible by the phrase "that is to say;" and considering, lastly, the axiomatic duty to seek diligently for sense, consistency, completeness and efficiency in every statute, and every part thereof—considering all these things, where are we to look for arguments or authorities to prove this statute inconsistent, or even ambiguous?

IV.

Let us assume, however, for the sake of the argument, that the act of 1882 contains distinct and inconsistent provisions—which of the conflicting provisions is to govern? The last, of course, as being the latest expression of the legislative will. This is the general rule, and there are special grounds for its application here, because the statute we are dealing with happens to be self-construing. For example, the thing commanded to be done is the refunding to "following named citizens of Tennessee" of an "amount of taxes;" the "amount of taxes" to be refunded is that amount which was "assessed upon and collected from the said named persons, contrary to the provisions of the regulations issued by the Secretary of the Treasury," &c.; and, then, lest there should be doubt as to the size or composition of the "amount" described, and the refunding of which is directed, the several items which go to the making up of the mass are each specifically set out and are brought into relation with the descriptive matter just mentioned by means of the phrase "that is to say." This phrase and its context are really used as a definition of the language preceding it. For example, the statute first

says: "Refund * * to the following named citizens * * the amount of taxes assessed upon and collected from the said named persons contrary to the provisions of the regulations * *" and then it says: "That is to say, to William Campbell, $8.96; Thomas Dean, $47.60 * *" If we analyze and paraphrase this language, we may reproduce it in this way: *To say, Refund to the following named persons the amount collected from them contrary to the provisions of the regulations, is to say, Refund to William Campbell, $8.96; Thomas Dean, $47.60.*

It is not a rare thing for statutes to contain construing or defining clauses and the power to enact the operative part of a statute inevitably carries with it the power to enact an explanatory part (United States *v.* Freeman, 3 How., 556; Stockdale *v.* Insurance Companies, 20 Wall., 323).

Assuming that the act of 1882 construes itself, there is nothing for the executive to do but to execute what has been both enjoined and explained.

That part of the statute beginning with the words, "that is to say," is more explicit than the part beginning with the words "the amount of taxes"; so that, having regard to certainty, as well as time, the later provision is to have precedence of the earlier, if they cannot march together.

V.

The rights of the appellee depending upon the statute, it is immaterial here what the Secretary of the Treasury has or has not done concerning the act of 1882; yet it may as well be mentioned that he ordered payment (p. 4) of $2,290 to appellee as being "in accordance with said act" and though he afterwards modified that order (p. 5) nothing in the modified order asserts that $2,290 is not the amount due under the act.

Respectfully submitted:

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